IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

FAO.No. 258 of 2006()

AGAINST THE ORDER DATED 29/08/2006 IN IA.1757/2006 IN IOP.8/2005 of PRINCIPAL SUB COURT,ERNAKULAM

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APPELLANT/PETITIONER

K.P.THOMAS, S/O. POULOSE,
5831, GEETHBHAVAN, PANAMPILLY NAGAR,
ERNAKULAM.

BY ADV. SRI.P.P.JACOB
SRI.B.MANIMOHAN

RESPONDENTS: RESPONDENT

CHANDRU, S/O. PANCHAVARNAM,
7/747, KARIMUGAL, VALIYAMGUTTAMALA,
PUTHENCRUZ VILLAGE, ERNAKULAM.

BY

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.PADMANABHAN NAIR, JJ.

F.A.O.No.258 of 2006

Dated this the 22nd day of January, 2007

JUDGMENT

Padmanabhan Nair,J.

Petitioner in I.O.P.No.8/2005 on the file of the Principal Subordinate Judge's Court, Ernakulam is the appellant. The challenge in this appeal is directed against an order passed by the Court below dismissing an application filed by the petitioner under Order IX Rule 9 of the Code of Civil Procedure. The I.O.P., was dismissed for default on 25-3-2006. Petitioner filed I.A.No.1757/2006 within two days for restoring the I.O.P dismissed for default. The only reason stated was that the petitioner was unable to appear before the court on the date on which the petition was posted for evidence as he was laid up due to illness. A counter affidavit disputing that statement was filed. The learned Subordinate Judge dismissed the application holding that the only object of the petitioner was to keep alive the attachment order obtained by him in the proceedings against the plaint schedule property. In respect of the medical certificate produced by the petitioner the court below took a view that it was not sufficient to prove his case.

2. The learned Subordinate Judge failed to note that the I.O.P was dismissed for default on 25-3-2006 and the application for restoration was filed within two days of the dismissal of the I.O.P. The petitioner has produced a medical certificate to prove that he was suffering from illness and he was advised bed rest till 18-3-2006. The reasons stated by the learned Subordinate Judge for dismissing the application filed under Order IX Rule 9 are not correct. We are of the view that the petitioner should be granted another opportunity to contest the matter on its merits.

In the result the appeal is allowed. The order passed by the court below dismissing I.A.No.1757/2006 in IOP 8/2005 is hereby set aside and the same is allowed. IOP No.8/2005 stands restored to file. The Principal Sub Court, Ernakulam shall dispose of IOP 8/2005 in accordance with law as expeditiously as possible.

(KURIAN JOSEPH, JUDGE)

(K.PADMANABHAN NAIR, JUDGE)

ahg.